

Amendments to the BVI Business Companies Act

On 12 August 2022, amendments to the British Virgin Islands ("BVI") Business Companies Act (As Revised) (the "Act") and BVI Business Companies Regulations (As Revised) (the "Regulations") were published by the BVI government and will come into force on 1 January 2023.

The amendments update various parts of the Act in line with international standards and best practice, including the strike off and restoration regime, voluntary liquidator qualifications for solvent liquidations, abolishing bearer shares and introducing a new annual financial return filing and a publicly available list of director names.

Strike Off Regime Changes

The current seven year period between a company being struck off the register of companies ("Register"), and being dissolved, is being abolished. Once the amendments are in force, when a company is struck off the Register it will also be dissolved on the date the Registrar of Corporate Affairs in the BVI (the "Registrar") publishes notice of the striking off in the Gazette.

Transitional arrangements will apply for companies that are struck off but not yet dissolved at the start of 2023 if they wish to be restored to the Register. Any company that is currently struck off but has assets or ongoing operations, should consider whether to take action now to be restored to the Register before the amendments come into force. Companies should also stay up to date with their filings and

fees with the Registrar to avoid being unintentionally struck off and dissolved.

New Procedure for Restoration of Dissolved Companies

The amendments introduce a new, simpler procedure for companies to apply to the Registrar to be restored to the Register when they have been dissolved, in addition to the existing court procedure. Companies will be able to apply to the Registrar within five years of being dissolved if:

- (a) They were carrying on business or in operation at the date of their dissolution;
- (b) A licensed person has agreed to act as registered agent of the company and confirmed that the company's records have been updated in compliance with anti-money laundering obligations;
- (c) The company pays a restoration fee and any outstanding fees / penalties; and
- (d) The Registrar is satisfied that it would be fair and reasonable for the company to be restored.

If any property of the company vested in the Crown when the company was dissolved, notice of the application to be restored also has to be given to the Crown. The existing court restoration procedure will also be available if:

- (a) The company was dissolved following completion of its liquidation;
- (b) On the date of dissolution the company was not carrying on business or in operation;

- (c) The purpose of the restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company or make an application for the company's property to be returned where it vested in the Crown on the company's dissolution; and
- (d) In any other case where the court considers it just and fair to restore the company to the Register.

A court application can be made by various parties including a creditor, former director / member / liquidator of the company, a person who but for the company's dissolution would have been in a contractual relationship with the company, a person with a legal claim against the company or any other person who can establish an interest in having the company restored.

Changes for Voluntary Liquidators

- (a) BVI Residency – A voluntary liquidator appointed by a company after 1 January 2023 will need to be resident in the BVI. Where joint voluntary liquidators are appointed, only one must be resident in the BVI, allowing a joint liquidator to be appointed, for example, in a country where the company has business operations. Voluntary liquidators appointed before 1 January 2023 will not have to be resident in the BVI.
- (b) Voluntary Liquidator Qualifications – Individuals appointed as liquidators will be required to have at least two years' liquidation experience, professional competence to liquidate the company and an appropriate professional qualification or hold an insolvency practitioner's licence issued by the BVI Financial Services Commission (the "Commission").
- (c) Liquidation Records – Voluntary liquidators will be required to collect the records kept and maintained by the company under the Act and send copies of those records to the

company's former registered agent in the BVI at the end of the liquidation.

New Annual Financial Returns

Unless exempt, companies will have to file a new annual return with their registered agent setting out certain financial information. The annual return will have to be filed within nine months of the calendar year end or of the end of the company's financial year, if different. The first return is required for the 2023 financial year, with filings expected to be made by the end of September 2024 for companies with a calendar year end. Details of the format and content of the annual return are expected to be confirmed in the coming months.

Exemptions apply for listed companies, companies regulated under BVI financial services legislation that provide financial statements to the Commission, and companies that file annual tax returns (with financial statements) with the BVI Inland Revenue.

The annual return will not be filed with the Registrar or be publicly available. Registered agents will have to notify the Registrar however if a company does not file its annual return.

Publicly Available List of Director Names

A list of a company's current directors will be available on request for registered users of the BVI online VIRRGIN system. Other details included in a company's register of directors will not be publicly available, such as directors' address, date of birth and details of former directors. Currently, the register of directors is only available via a court order or to a competent regulatory authority.

Bearer Shares Abolished

Companies will no longer be able to issue bearer shares and any existing bearer shares

will automatically convert into registered shares on 1 July 2023. The current regime of bearer shares being held by a regulated custodian will be abolished.

Charitable or Non-Commercial Business

The Act as amended will include separate provisions for incorporation of a BVI company to pursue charitable or non-commercial purposes outside the BVI. Further details must be provided on incorporation, including how the company will segregate its charitable / non-commercial activities from its other business and the geographical region in which the charitable / non-commercial purposes will be carried out, and the company must file its annual audited statements with the Registrar in relation to its charitable / non-commercial business.

Framework for Register of Persons with Significant Control in the Future

Framework provisions are included in the amendments to allow for registers of persons with significant control for BVI companies in the future, with further details to be set out in regulations. At this time there is no definitive timeframe for implementation of these provisions however and the recent amendments to the Act do not require companies to maintain this register yet. We will publish further updates as and when detailed regulations are available and the registers introduced.

Conclusion

The amendments to the Act and Regulations are intended to maintain international standards and best practice throughout BVI company law. As the changes come into force on 1 January 2023, companies should review the impact of them now to identify any action needed.

How the Maples Group Can Help

For further information please liaise with your usual Maples Group contact or any of the persons listed below.

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